consent again began to cohabit together, *held,* that such mutual consent followed by cohabitation as husband and wife was a common-law marriage and operated as a revocation of the will under § 7072 COLO. REV. ST. 1908.—*In re Matteote's Estate* (Colo. 1915), 151 Pac. 448.

§ 7072 COLO. REV. ST. 1908 provides for the revocation of a will by the subsequent re-marriage of the testator. This statute accords with the statutes of several other states. KENTUCKY STATUTES, 1909, § 4832; MASSACHUSETTS REV. LAWS (1902), c. 135, § 9 (unless it appears that the will was made in contemplation of marriage); NORTH CAROLINA—*Davis* v. *King,* 89 N. C. 441, quoting BATTLE'S REVISED CODE, c. 119, § 42; RHODE ISLAND REV. LAWS (1909), c. 254, § 76; VIRGINIA CODE (1887), § 2517; WEST VIRGINIA ANN. CODE (1906), c. 77, § 3138. All of these statutes differ from that of Colorado in this, only,—that they do not apply to wills made in the exercise of a collateral power of appointment. These statutes are undoubtedly in derogation of the common law, because marriage alone at common law did not revoke a will, but the marriage must have been accomplished by birth of issue. *Overbury* v. *Overbury, 2* Shaw. 242, as to revocation of will of personalty by birth of issue: *Christopher* v. *Christopher, 2* Dickens 445, Abbott 365, as to revocation of will devising land, by birth of issue. The subsequent marriage which in the principal case operated as a revocation of the will has no validity except as a common-law marriage. That mutual consent followed by cohabitation coupled with a continuous and mutual acknowledgement of the married relation makes a valid common-law marriage, see *Klipfel's Estate* v. *Klipfel,* 41 Colo. 40, 92 Pac. 26, 124 Am. St. Rep. 96. Here, then we have a statute in derogation of the common law including within its operation a marriage which gains its validity only through recognized principles of common law. No similar decision under a similar statute has been found, but the holding of the court would seem to be correct in those states which combine a statute similar to the one in Colorado and a recognition of a common law marriage as a valid marriage.

WORKMEN'S COMPENSATION ACT — CONTRACTUAL ASSUMPTION OF RISK. — Plaintiff's husband was employed by defendant, his duty being to make repairs on electrical apparatus. He climbed a pole to replace a defective insulator; some of the wires attached to this pole carried heavy voltage, and it was customary for employees to have the current shut off while the apparatus was being repaired. In this case no such direction was given, and plaintiff's husband was killed when he accidentally touched a wire. The Workmen's Compensation Act provides that in an action to recover damages for personal injury sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained it shall not be a defense that the employee had assumed the risk of the injury. *Held,* that the statute relates merely to defense of voluntary assumption of risk and not to contractual assumption, and therefore the defense of contractual assumption of risk by employee was open to the defendant. *Ashton* v. *Boston & M. R. Ry. Co.* (Mass. 1915), 109 N. E. 820.

The court in construing the Act, draws a sharp distinction between contractual assumption of risk and voluntary assumption, defining the former as applying to those risks which are open and obvious in the natural course of employment; and the latter as applying to those arising outside the open and obvious ones. The statute is said to apply only to the latter. Contractual assumption of risk is said not to be a "defense," but matter capable of being shown under a general denial, and so not within the meaning of the statute. The Federal Act has been construed in different ways by different courts, some giving emphasis to the fact that the Act refers specially to the abrogation of such defense when the employer has violated a federal statute, holding that the Act could not have been intended to be applied to any other forms of risk than the ones named. Examples of such reasoning are to be found in *Barker* v. *Ry. Co.,* 88 Kan. 767, and *Neil* v. *Idaho Ry. Co., 22* Idaho 74, 125 Pac. 331. The Florida Court has adopted the view that the Act abrogated the common-law defense entirely—*Atlantic Coast Line Ry.* v. *Whitney,* 65 Fla. 72, 61 So. 179, but this holding has failed to find support elsewhere. State courts which have been called upon to construe statutes which on their face abrogate the defense of assumption of risk, have almost universally adopted the same view as is expressed by the Massachusetts court. A good example of these decisions is found in *Brotzki* v. *Wisconsin Granite Co.,* 142 Wis. 380, which holds that a servant assumes the risks ordinarily incident to his employment if they are so obvious that he is presumed to know of their existence. This decision is under a statute similar to that in Massachusetts. Care must be exercised, however, in distinguishing this principle from that governing contracts by which an employee waives the protection of a statute involving an exercise of the state's police power. In *Atchison, Topeka, and Santa Fé Ry.* v. *Frank,* 74 Kan. 519, the defense to an action for personal injury, brought by a brakeman on the ground of his employer's negligence, was that he had released the company from such liability by a specific clause in his contract of employment. The court ruled that such a contract was against public policy and void, and that protection offered by a statute which arose from the state's police power could not be waived. The same view is expressed in *Holden* v. *Hardy,* 169 U. S. 366.